



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

JPL/MRG
F. #2019R01460

*271 Cadman Plaza East
Brooklyn, New York 11201*

January 4, 2024

By ECF

The Honorable Eric N. Vitaliano
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Javier Aguilar
Criminal Docket No. 20-390 (S-1) (ENV)

Dear Judge Vitaliano:

For the reasons set forth on the record during yesterday's Court appearance, the government respectfully writes, having conferred with defense counsel, to request that the Court file the enclosed redacted superseding indictment. The enclosed superseding indictment redacts Counts Two and Four, thusly enabling the Court and the parties to refer to Counts One, Three and Five, which are to be tried before a jury yet to be fully selected and sworn, simply as Counts One, Two and Three, respectively.¹ Consistent with the Court's practice, the parties expect that a copy of the redacted indictment will not be made available to the jury during deliberations.

¹ The enclosed superseding indictment also redacts paragraph 36 of the speaking portion, and paragraph 49(k) (Count One: Overt Act K). As the government disclosed to the defendant in November 2023, the government does not intend to prove those specific allegations at trial. See ECF Dkt. No. 232 at 9 n.2 (government's request to charge omitting Overt Act K); see also United States v. Rosenthal, 9 F.3d 1016, 1023 (2d Cir. 1993) (no constructive amendment to indictment where jury charge was based on a redacted indictment that deleted an allegation that was not an "essential element of the offense required to be proved at trial").

As indicated above, we have conferred with the defense who consents to this request and all of the redactions set forth in the attached.

Respectfully submitted,

BREON PEACE
United States Attorney

By: /s/
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Enclosure (Redacted Superseding Indictment)

cc: Clerk of the Court (ENV) (by ECF and e-mail)
Counsel of Record (by ECF)